

Judge Berman

08 CV 02355
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Drubner & Hartley, L.L.C.,

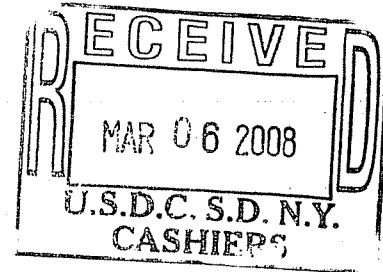
Plaintiff,

v.

United States Department of Commerce, and the National
Technical Information Service,

Defendants.

CIVIL ACTION NO.



COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Drubner & Hartley, L.L.C. brings this action pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to compel the production of records concerning the identification of customers that have purchased certain products from the National Technical Information Service, which have wrongfully been withheld by defendants.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this District under 5 U.S.C. § 552(a)(4)(B).

PARTIES

2. Plaintiff Drubner & Hartley, L.L.C. ("Drubner & Hartley" or "plaintiff") is a law firm with offices in New York, New York and Waterbury, Connecticut.

3. Defendant the United States Department of Commerce is organized under the Executive Branch of the Federal government and is located in Washington, D.C. It is charged with fostering, promoting, and developing foreign and domestic commerce. The United States Department of Commerce is an agency within the meaning of 5 U.S.C. § 552(f), and has possession and control of the records that plaintiff seeks.

4. Defendant the National Technical Information Service ("NTIS") is an agency of the United States Department of Commerce located in Springfield, Virginia. According to its website, NITS is the largest central resource for government-funded scientific, technical, engineering, and business related information, which provides businesses, universities, and the public with access to over 3 million publications covering over 350 subject areas. NTIS is an agency of the United States within the meaning of 5 U.S.C. § 552(f), and has possession and control of the records that plaintiff seeks.

STATEMENT OF FACTS

5. One of the products that NTIS offers for sale to the public is a database compiled by the Social Security Administration (the "SSA") entitled the Death Master File (the "DMF"), which contains over 65 million records of deaths that have been reported to SSA. According to the NTIS website, the DMF is used by "leading government, financial, investigative, credit reporting organization, medical research and other industries." The DMF is offered for sale by NTIS in several formats. An individual or entity may purchase the DMF by submitting a completed order form or contacting NTIS' subscription department and paying the prescribed fee.

6. By a letter to NTIS dated August 14, 2007, Jeffrey Drubner, an attorney at Drubner &

Hartley, submitted a Freedom of Information Act request on behalf of Drubner & Hartley for “a list of all businesses, companies, or corporations (hereinafter businesses) who purchased the SSA’s Death Master File (DMF) in any format whatsoever (i.e. Online, DVD, CD, Hardcopy, etc.) in any format within the past five calendar years.” Mr. Drubner further stated that he was not requesting “the names of any individuals who have purchased the referenced DMF list.”

7. By letter dated August 21, 2007, defendant NTIS denied plaintiff’s request in its entirety on the grounds that the information sought purportedly is exempt from disclosure pursuant to 5 USC § 552(b)(5).

8. By letter dated September 7, 2007, plaintiff appealed the denial by NTIS of its FOIA request to the United States Department of Commerce.

9. Between September 2007 and January 2008, Mr. Drubner spoke by telephone with representatives of the United States Department of Commerce on multiple occasions to find out if a determination had been made as to plaintiff’s appeal.

10. During these communications, Mr. Drubner offered to limit the scope of information sought by the FOIA request in an effort to try to reach a compromise. Although representatives of the Department of Commerce indicated that they would consider plaintiff’s proposals to limit the FOIA request, ultimately defendants refused to produce any of the requested information.

11. Accordingly, on January 30, 2008, plaintiff received a letter from the United States Department of Commerce rejecting plaintiff’s appeal, again claiming that the records are exempt from disclosure pursuant to 5 U.S.C. § 552(b)(5).

12. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to NTIS.

13. Plaintiff has a statutory right to the list that it seeks, and there is no legal basis for defendants' refusal to disclose it.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that the Court award him the following relief:

A. Declare that the United States Department of Commerce and NTIS have violated the Freedom of Information Act;

B. Order that the United States Department of Commerce and NTIS immediately disclose the requested list in its entirety to plaintiff;

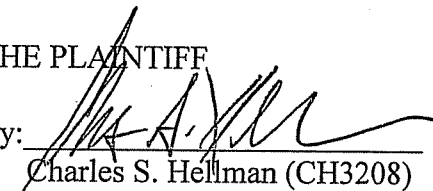
C. Award plaintiff costs and reasonable attorneys' fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and

F. Grant such other and further relief as this Court deems to be just and proper.

Dated: March 6, 2008

Respectfully submitted,

THE PLAINTIFF

By: 
Charles S. Hellman (CH3208)

**DRUBNER & HARTLEY,
L.L.C.**

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